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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,723	07/02/2001	John Christopher Barrott	AUR 0014 IA	1125
7590	01/13/2005		EXAMINER	
Killworth, Gottman, Hagan & Schaeff, L.L.P. Suite 500 One Dayton Centre Dayton, OH 45402-2023			FISCHER, ANDREW J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/897,723	BARROTT ET AL.
	Examiner	Art Unit
	Andrew J. Fischer	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 October 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 and 21-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-12 and 21-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Acknowledgements

1. Applicants' amendment filed October 29, 2004 is acknowledged. Accordingly, claims 1-12 and 21-28 remain pending. However, because Applicants have amended the claims such that this application now contains inventions directed only towards a single invention, a restriction is now improper. Therefore, the restriction as set forth in the previous Office Action mailed August 24, 2004 ("First Non Final Office Action") is hereby withdrawn. Should Applicants amend any claim or add claim(s) such that this application would then contain claims directed towards two (2) or more distinct or independent inventions, an additional restriction may be required at that time. See MPEP §811.03.

2. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" refers to examiner(s) generally.

3. This application is a continuation-in-part ("CIP") of 09/409,566 ("Parent Application").

4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

Art Unit: 3627

Terminal Disclaimer

5. The terminal disclaimer filed on October 29, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 09/409,566 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC §102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 1, as understood by the Examiner, is rejected under 35 U.S.C. §102(b) as being clearly anticipated by Chen et. al. (U.S. 5,590,197) (“Chen”). Chen discloses presenting an electronic selection guide page which lists a plurality of user actions (e.g. purchase a product); displaying a first electronic response page (the checkout page) in response to selection of one of the plurality of actions; and the electronic response page displaying a plurality of information (e.g. description, price, etc.).

8. Claim 1-12 and 21-28, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Wong et. al. (U.S. 6,115,690) (“Wong”). Wong discloses presenting an electronic selection guide page which lists a plurality of user actions (e.g.

purchase a product); displaying a first electronic response page (the checkout page) in response to selection of one of the plurality of actions; and the electronic response page displaying a plurality of information (e.g. description, price, etc.).

9. Claim 1-12 and 21-28, as understood by the Examiner, are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Yoshinaga et. al. (JP 4 10134105 A) (“Yoshinaga”). Yoshinaga discloses the claimed method including web based funeral system.

10. Claims 2-12 and 21-28, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Torres et. al. (U.S. 2002/0004757 A1) (“Torres ‘757”).¹ It is the Examiner’s principle position that Torres ‘757 discloses the claimed server structure.

Claim Rejections - 35 USC §103

11. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 2-12 and 21-28, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Torres ‘757.² It is the Examiner’s principle position that the claims are anticipated because of the claimed server structure is inherent.

¹ It is the Examiner’s position that the effective U.S. filing date for claims 2-12 is July 2, 2001.

² See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

Art Unit: 3627

13. However if not inherent, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Torres '757 to include the claimed server structure. As noted in the previous First Non Final Office Action, absent such new or unexpected results, such modifications either increasing or decreasing the number of servers or even reassigning tasks to different server(s) would have helped maintain benefits from economies of scale in addition to offering increased security, excellent data management, fast response, and room for expansion while reducing both operating and capital costs.

14. The Examiner concludes that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,³ the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements⁴ with the required clarity, deliberateness, and precision.⁵ Third, after receiving express notice in the previous Office Action of the Examiner's

³ See the First Non Final Office Action, Paragraph No. 27.

⁴ "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

⁵ "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

Art Unit: 3627

position that lexicography is not invoked,⁶ Applicants have not pointed out the “supposed errors” in the Examiner’s position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicants have not argued lexicography is invoked). Finally and to be sure of Applicants’ intent, the Examiner also notes that Applicants have declined the Examiner’s express invitation⁷ to be their own lexicographer.⁸ Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁹ The Examiner now relies heavily and extensively on this

⁶ See again the First Non Final Office Action, Paragraph No. 27.

⁷ *Id.*

⁸ The Examiner’s requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner’s requirements were simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO’s goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO’s The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed January 10, 2005).

⁹ See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

interpretation.¹⁰ Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

15. Under the broadest reasonable interpretation standard noted above and unless modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in the First Non Final Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner's claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary¹¹) during ex parte examination.

16. The Examiner confirms that this application does not contain any product-by-process claims.

17. Functional recitation(s) using the word "for" or other functional terms (e.g. "for personalizing said funeral" as recited in claim 1) have been considered but given less patentable weight¹² because they fail to add any steps and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed. Cir. 2001) (Where the language in a method claim states only a purpose and

¹⁰ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . [Emphasis added.]"

¹¹ See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) ("[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.").

¹² See e.g. *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight).

intended result, the expression does not result in a manipulative difference in the steps of the claim.).

Response to Arguments

18. Applicants' arguments filed October 29, 2004 have been fully considered but they are not persuasive.

Declaration

19. With respect to claim 1, the declaration filed on October 29, 2004 under 37 CFR 1.131 ("First Declaration") is sufficient to overcome the Richardson reference. The Examiner notes that the First Declaration does not address claims 2-12. Because this application is a CIP, the priority of the claims in this application is determined on a claim by claim basis. Because First Declaration failed to address claims 2-12, the rejections based upon Torres remain.

Conclusion

20. Applicants' amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

22. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

24. Because this application is now final, Applicants are reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by the Examiner to overcome a

Art Unit: 3627

particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (e.g. §101 patentable subject matter, §112 1st paragraph written

description and enablement, §112 2nd paragraph indefiniteness, and §102 and §103 prior art).

Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

25. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the Borland's Paradox for Windows User's Guide is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The reference is cited in its entirety. Paradox for Windows User's Guide exemplifies a typical relational database system. Because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Paradox for Windows User's Guide is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the reference.

26. Finally, in accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks

Applicants for their "Remarks" (beginning on page 6) traversing the Examiner's positions on various points. If Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹³ the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.

A handwritten signature in black ink that reads "AJFischer 1/10/05". The signature is fluid and cursive, with "AJFischer" being the main name and "1/10/05" being the date written below it to the right.

Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF
January 10, 2005

¹³ E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.